

Response to Comments Received on the EEA Draft Greenhouse Gas Policy and Protocol

On July 11, 2007 the Executive Office of Energy and Environmental Affairs (EEA) published in the *Environmental Monitor* a draft of the proposed Greenhouse Gas (GHG) Policy, to be implemented through the Massachusetts Environmental Policy Act (MEPA). The comment period closed on August 31, 2007. EEA thanks the 20 organizations who provided comments on the draft Policy.

Commenters generally expressed support for the intent and the approach of the proposed Policy; no one recommended that EEA not adopt the Policy. Commenters recommended a number of substantive and procedural modifications, and in some instances requested that EEA clarify the applicability of the proposed Policy based on jurisdiction, impacts, or type of project. After careful review, the following discussion provides EEA's response to key issues raised by commenters, and identifies those instances where the Policy has been revised in response.

GOALS AND OBJECTIVES

Identify the process for revising/updating the Policy.

EEA has clarified that the Policy will be subject to periodic and public review.

APPLICABILITY

Clarify that the Policy will apply to new projects only.

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Clarify that projects are subject to review under the Policy based on the vehicle trips per day category only when there is a related state agency action.

EEA will apply the policy to projects pursuant to the vehicle trips per day category when there is either full scope jurisdiction over the project, or such analysis is within the subject matter of one or more state permits.

Revise the numerical threshold for the vehicle trips per day category to include all projects with greater than 3,000 vehicle trips per day.

The MassHighway Vehicular Access Permit, or "curb-cut" permit, replaces the transportation category of the draft policy, which established jurisdiction for privately funded projects that generate 3,000 or more new vehicle trips per day for office projects; 6,000 or more new vehicle trips per day for mixed-use projects that are 25 percent or more office space; or 10,000 or more new vehicle trips per day for other projects. Accordingly, EEA has revised the final Policy to apply to all projects that exceed the MEPA regulatory threshold for preparation of an Environmental Impact Report of 3,000 or more new vehicle trips per day, regardless of use. A greenhouse gas emissions analysis may be required of projects that generate 2,000 vehicle trips per day, or 1,000 trips and 150 new parking spaces, or 300 new parking spaces, should such project require an EIR.

Expand the applicability of the Policy to include airport projects, electric generating facilities, new fuel pipelines, etc., including those that do not exceed MEPA regulatory thresholds requiring mandatory EIR.

In general, the MEPA review thresholds are designed to identify projects that may have significant impacts by characterizing the types and levels of impacts associated with a project, not by categorizing a project type, per se.

Clarify how, or if, the Policy pertains to municipal projects that are locally funded.

A Project is subject to the Policy if it requires an EIR and falls within any of the four categories of applicability, whether or not it is municipally funded.

The Policy should include an explicit statement that construction emissions are excluded.

While in general the Policy will focus on post-construction emissions, EEA may require that a project otherwise subject to the Policy assess and identify minimization and/or mitigation measures for construction-related emissions.

EEA should not require compliance with the Policy for facilities subject to CO₂ limits through Energy Facilities Siting Board review, the so-called Filthy Five regulations, the Regional Greenhouse Gas Initiative (RGGI) or national GHG program requirements.

For projects subject to review of GHG impacts under state programs, EEA notes that the purpose of MEPA review is to inform state agencies about the potential impact of a project subject to state agency action, and to identify the means by which damage to the environment has been avoided, minimized and mitigated to the maximum extent practicable. As already occurs, EEA will use the MEPA review process to harmonize, as much as possible, the analysis and mitigation commitments required by the Policy with those associated with any state agency actions. Projects subject to RGGI are still required, if subject to MEPA review, to identify all feasible means of avoiding, minimizing and mitigating damage to the environment, including GHG emissions. EEA will evaluate future national GHG program requirements in its periodic review of the Policy.

EMISSIONS QUANTIFICATION PROTOCOL

General Guidance

MEPA should provide formal approval of the scope/methodology of GHG emissions assessments.

Consistent with long-standing practice, the MEPA office encourages pre-filing meetings with proponents to discuss proposed approaches to addressing the Policy.

The level of design details required to identify emissions will unduly burden proponents, particularly municipalities.

As the Policy acknowledges, projects may be submitted for MEPA review at varying levels of detail. Proponents should consult with the MEPA office prior to filing for review to discuss the level of design detail the proponent proposes to submit, and how measures to avoid, minimize and mitigate GHG-related impacts will be addressed.

How will the policy be applied to phased project, design-build projects?

The Policy will be applied in these circumstances the same way MEPA currently requires analysis of impacts and proposed mitigation for these types of projects. Proponents should consult with the MEPA office prior to filing to discuss their proposed approach.

Direct Emissions from Stationary Sources

Indirect Emissions from Energy Consumption

Replace “electricity” with “energy” to capture both electrical generation and other forms of energy generation.

EEA has revised the Policy accordingly.

Add, as the last sentence of the fifth paragraph under this section, the following statement:

“Similar factors for district heating, cooling or cogeneration plants should be gathered from the plant operator.”

As the emissions associated with these sources may vary depending upon the actual fuel used and/or equipment efficiency, EEA agrees with the recommendation to gather data from the plant operators. However, the policy will also be amended to require project proponents to identify the sources for these emissions factors when outlining their total emissions.

The Policy should require that EIRs contain a baseline GHG emissions condition to ensure a level playing field, reward those that minimize emissions from the outset, and ensure real emissions reductions. The Policy should require comparison of average GHG emissions for similar size/type of project (e.g. use a tool such as Energy Star Target Finder to identify average GHG emissions for traditional subdivision vs. mixed use, low impact development, etc.).

The Technical Advisory Committee considered using either the Energy Star Target Finder or a building code-compliant building as a required baseline, and evaluated the merits of each. After further review, and in consideration of comments received, EEA has revised the policy to require proponents to incorporate the code-compliant building (s) as a project baseline.

Avoid double counting when energy use is from a facility subject to CO2 limits.

If the purpose of the MEPA Greenhouse Gas Policy were to create an aggregate inventory of CO2 emissions, it would be necessary to avoid double counting. However, that is not the purpose of this policy. Also, as discussed above, the MEPA process is not redundant to regulatory programs that establish caps on emissions.

Indirect Emissions from Transportation

Clarify how policy will affect transportation projects (i.e. MassHighway Massport, MBTA projects).

A Project, including a transportation project, is subject to the Policy if it requires an EIR and falls within any of the four categories of applicability.

OFFSETS

Direct mitigation should be prioritized over off-site measures.

EEA agrees; the Policy has been revised accordingly. Additionally, any offsets proposed shall need to meet strict verification standards to guarantee that funds allocated to said project were directly responsible for GHG emission reductions.

EOEA should establish a land acquisition/management fund for the purchase/maintenance of permanently protected actively growing forested areas. Mitigation could include contributions to this fund.

EEA agrees that such an off-site offset might be appropriate to consider in an instance where on-site offsets are not feasible. EEA has taken the recommendation to create such fund itself under advisement.

Add “or economic” to the end of the statement “EEA will be receptive to proposals to mitigate...through offsite measures when avoidance or minimization strategies are not feasible. Under the MEPA regulations, the concept of ‘feasibility’ is informed in part by the objectives of the proponent, which necessarily entails economic consideration.

GHG reduction credits should be defined in accordance with 310 CMR 7.00 Appendix B: “GHG credit means a credit based on an amount of emission reductions, avoided emissions or sequestered emissions of a GHG. One GHG Credit has an assigned value of one ton of carbon dioxide equivalent. GHG credits shall be expressed in whole tons. When certifying or verifying GHG Credits, the number of GHG Credits is rounded down for decimals less than 0.5 and rounded up for decimals of 0.5 or greater.”

The Massachusetts Department of Environmental Protection is currently promulgating regulations which will obviate this definition. Any proposed offsets will be reviewed on a project-specific basis.

OPT-OUT PROVISION

Examples of measures and or parameters of determining offset should be provided.

Projects that propose such measures will be evaluated on a case-by-case basis. Examples of ‘exceptional measures’ that may be determined sufficient to allow opt-out may include LEED-Gold certification or consistency with exceptional local sustainable design requirements, with satisfactory demonstration that such certification or consistency provides significant net reductions in project-related GHG emissions.

SECTION 61 FINDINGS

Add Records of Decision to this section to encourage proponents to incorporate mitigation commitments into waiver requests.

The Policy has been revised accordingly.

APPENDIX – SUGGESTED MITIGATION MEASURES

Siting and Site Design

Add: public facilities including schools, libraries, post offices, service centers, senior housing, health care facilities should be located central to their service areas to maximize walking, transit and cycling.

The Policy identifies consistency with the Commonwealth Sustainable Development Principles, which address the intent of the comment, as a potential mitigation measure.

Building Design and Operation

Add: purchase Energy Star rated appliances that are the lowest energy rating.

The Policy has been revised accordingly to reference all applicable Energy Star rated products.

Transportation

Add: On- and off-site improvements to reduce vehicle mile trips including sidewalks, paths, traffic signals, lighting and landscaping. Add: Provide no-idling truck zones at loading/off-loading and queuing areas.

The Policy has been revised accordingly.

OTHER COMMENTS/QUESTIONS

MEPA should establish a database to retain all emissions information.

As discussed above, EEA agrees.

MEPA must ensure that assumptions made at the EIR phase are accurate, and be able to enforce and verify the performance and emissions of the project once constructed; MEPA should require reporting.

Mitigation commitments will be memorialized in agency Section 61 Findings. MEPA will determine appropriate reporting requirements on a case-by-case basis.

MEPA should provide technical assistance with implementation of the policy.

EEA encourages proponents to consult with the MEPA office prior to filing; after filing, as with all projects, proponents should contact the MEPA analyst managing their project with any questions or requests for guidance.

EEA should ensure that GHG emissions are not weighted disproportionately when balancing against other important resources such as wetlands.

EEA respects the concern and does not propose to do so.

COMMENTERS

City of Boston

Conservation Law Foundation/Environment Massachusetts/Clean Water Action

Epsilon Associates

Sierra Club

Camp Dresser and McKee

Central Massachusetts Regional Planning Commission

Beals and Thomas, Inc.

Covanta

Berkshire Environmental Action Team

MassAudubon

Massport

MassCommute

Linda Benevides

Inge Uhlir

Charles Randall Creagh

Organization for the Assabet River

Associated Industries of Massachusetts

Walk Boston

National Association of Industrial and Office Properties

Dominion